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EXAMINER

HANSEN, JAMES ORVILLE

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/606,008
Filing Date: June 25, 2003
Appellant(s): SCHESSL ET AL.

Russell W. Warnock
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 17, 2007 appealing from the Final Office action mailed July 18, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1-7 have been canceled.

This appeal involves Claims 8-15.

(4) Status of Amendments after Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,818,043	Borgen	4-1989
WO 98/33426	Sargeant et al.	8-1998
DE 3501364	Meyer	7-1986

Certified English translation of German DE 3501364.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 8, 10 & 11 are rejected under 35 U.S.C. 102(b) as being anticipated by WIPO publication 98/33426 [known hereafter as WO`426]. WO`426 (see figures 1-47) teaches of a dishwashing machine comprising: a dishwashing machine housing (fig. 8) having an internal height {height internal of the housing}; a pair of retractable pull-out upper and lower containers (202a, 202b) mounted one above the other in the housing; each of the containers containing a dishwashing system [see disclosure – e.g., pages 2-4 & figures 2, 3 & 7]; and the containers have a total height less than the internal height of the housing as readily apparent to the examiner (note fig. 7 – allowing the containers to be stacked and inserted within the housing). As to claim 10, the containers having different heights (fig. 7). As to claim 11, the upper container (202a) having a height greater than the height of the lower container (202b) as clearly represented in figure 7.

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2. Claims 9 & 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO`426 in view of German publication 3501364 [known hereafter as DE`364]. WO`426 teaches applicant's inventive claimed structure as disclosed above; including the housing having a pair of opposed sides (207) and a base (206), the containers having front pieces (viewed as the container front panels –shown in fig. 7) located between the sides with the containers located above the base, base panel (62) set back the depth of a pedestal recess (clearly shown in fig. 7 at the bottom front of the housing), wherein each of the sides includes a forward portion and a back portion (viewed as left to right portions - fig. 7) with each of the portions having a bottom edge, the bottom edge of the forward portion being higher than the bottom edge of the back portion (clearly demonstrated in fig. 7) as indicated by the pedestal recess disclosed above [it is noted that the side profile of the prior art housing (fig. 7) is essentially identical to the side profile of the instant invention's housing (fig. 1)] , and arguably “means” (see figure 24) between the machine and a surface; the examiner's position is that WO`426 does show the housing as including “means” for maintaining the base of the housing above the surface on which the machine is to be supported {the position is taken that figure 24 depicts the base with feet located underneath for supporting the appliance as is conventional in the art}, but WO`426 does not specifically disclose the “means” as including two pairs of adjustable feet. DE`364 (figures 1-3) is cited as an evidence reference to show that it was known in the art to incorporate two pairs of adjustable feet (2) to an appliance housing {dish-washing machine}. Accordingly, the position is taken that it would have been obvious to one have ordinary skill in the art at the time the invention was made to utilize four adjustable feet (two in the front and two in the rear) as taught by DE`364 because this arrangement provides the means to

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establish a level appliance housing and serves to compensate for minor irregularities [height differences] that may be present in the supporting floor surface.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO`426 and DE`364 in view of Borgen [U.S. Patent No. 4,818,043]. The combined prior art teaches applicant's inventive claimed dishwashing machine as disclosed above, with the position being taken that the feet would inherently be "set back" on the housing from the front of the machine at least as far as the depth of the recess since there are no provisions for the feet to be mounted forward of the recess i.e., the feet need to be mounted to the base which is rearward of the recess, with both pairs of installation feet disposed below the base of the housing (again, note fig. 24), and the base panel being set back on the housing from the front of the machine at a depth less than a depth of the pairs of feet as clearly evident when viewing the prior art reference as a whole (figs. 7 & 24 for example); but the combined prior art does not show the base panel as having a height substantially that of the height of the pair of installation feet below the base of the housing. Borgen (figures 1-9) is cited as an evidence reference to show that it was known in the cabinet art to incorporate a base panel (105) having a height substantially that of the height of front and rear installation feet (fig. 5) below a base (22) of a cabinet housing (10). As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the machine of the prior art in view of Borgen's teaching because this arrangement would effectively conceal the installation feet of the machine when viewed by a user from a frontal perspective. The prior art when combined would teach the bottom edge of the back portion of each opposed side of the housing as having a height above the surface on which the machine is supported such that the bottom

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edge of the back portion of each of the opposed sides does not contact and is not supported directly on the surface.

(10) Response to Argument

4. As to appellant's remarks concerning the anticipatory rejection of Claims 8, 10 & 11, note the following: Appellant merely restates the limitations present in Claim 8, reiterates the elements of WO`426 as applied to the claimed limitations, and requests withdrawal of the rejection. The position is taken that the rejection as set forth above adequately addresses all the claimed limitations, whereas appellant's remarks do not clearly point out the patentable novelty in which appellant believes the claimed limitations represent in view of the state of the art disclosed by the cited reference.

5. As to appellant's remarks concerning the obviousness-type rejection of claims 9 & 12-14, note the following: Appellant asserts that WO`426 does not teach or disclose a dishwashing machine having sides and a base that are raised above a surface on which the machine is supported. As set forth in the rejection, the position was taken that the limitation in question is addressed as evidenced by the feet elements located below the base of the housing as demonstrated in figure 24 of WO`426. The limitation is further addressed with the incorporation of modifying evidence reference to DE`364 that not only shows means connected to a base of the machine, but further demonstrates an adjustable aspect associated with these means, that is conventional in the art, for the purpose of leveling the machine when installed. Figure 8 of WO`426, which appellant relies on for support in asserting that the machine is not raised with respect to its supporting surface, is merely a stripped carcass or bare chassis of the cabinet that is depicted to show structural features only, not an end product

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representation. As to the combination of the cited prior art, note the following: where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

Appellant claims a combination that only unites old elements with no change in the respective functions of those old elements, **and the combination of those elements yields predictable results**; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S. Ct. at 1740, 82 USPQ2d at 1396. Accordingly, since the appellants have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement. Furthermore, appellant is arguing Claim 15 limitations within the context of prior art rejections showing the teaching of limitations within Claims 9 & 12-14.

6. As to appellant's remarks concerning the obviousness-type rejection of claim 15, note the following: Appellant asserts that Borgen is non-analogous art and is not reasonably pertinent to the particular problem with which the inventor was concerned.

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Borgen utilizes the kick panel in order to provide a finished appearance to the cabinet assembly and further allows the panel to pivot so as to permit cleaning beneath the device. The examiner puts forth that Borgen was concerned with the same particular problem with which the instant invention was faced in that a gap existed between the raised device/structure and the floor surface upon which the device/structure was supported when installed. A panel was used to conceal the gap while providing an enhanced aesthetic appearance since the device would appear as an integral device when installed. Borgen takes an additional step and allows the panel to be pivoted in order to clean beneath the device. As such, all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/James O. Hansen/

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